are registered as they are for far other reasons than that of inability to pass the examinations necessary for entrance to the regular classes.

One other fact especially worthy of notice is that the present Second Year class is now larger than it was in its first year, numbering 112 this year as against 101 last year. This is something which has never happened before, at least since the present system of examinations began, and in itself alone is something rather remarkable. The natural tendency, of course, is that a class in the Law School, like a class in college, should steadily diminish in numbers from its first to its last year. But in this instance it is gratifying to see that the number of men who fell out at the end of the first year was so small that it could, even without reckoning the few who for various reasons had failed to receive promotion to the present Third Year class, be more than replaced by the number entering to advanced standing.

The following list shows the number of students as they appeared in the Catalogue of 1890–91, and as they will appear in that of 1891–92: —

1890-91.		1891-92.	
Third Year	44	Third Year	48
Second Year	73	Second Year	112
First Year	101	First Year	142
Special Students	61	Special Students	61
Total	279	Total	363

JUDICIAL GRAMMAR. — The REVIEW is indebted to the Chief Justice of Montana, Hon. Henry N. Blake, for an exhaustive research (the substance of which is given below) into the usages of the bench, both in this country and in England, in regard to the use of number (*i. e.*, whether singular or plural) in terms which are necessarily employed with great frequency in instructions or opinions. The subject is one, as the Chief Justice remarks, of form rather than substance, the use of incorrect grammar not being material from a legal point of view. Sir Edward Coke, in the preface to his Commentaries upon Littleton, says: "In school divinity, and amongst the glossographers and interpreters of the civil and canon laws, in logick, and in the liberal sciences, you shall meet with a whole army of words, which cannot defend themselves *in bello grammaticali*, in the grammatical war . . ." It is probably to meet the confusion arising *ex bello grammaticali* that the canon of interpretation was established, that statutory expressions in the singular number shall be deemed to include the plural, and *vice versa*. The question is, shall we say, "the majority of the court are," or "the majority is," "the court are," or "the court is," "the jury are," or "the jury is," etc., etc.? The Chief Justice finds a great diversity among the members of the bench in the use of these terms. After citing a very large number of authorities, he comes to the conclusion that the highest number of jurists has sanctioned the use of the expressions "the majority are," "the court is," "the jury are." Why the distinction should be made between the jury and the court, except in the case of a single judge, it is difficult to imagine. It probably arises from the fact that the court, though really composed of several individuals, is (or are) vulgarly looked upon as an awful entity; whereas it is always difficult to remember that the jury are not "twelve men good

and true." Then again, in this country at least, the opinion of the whole court is, as a rule, written by one of its members, whereas the jurors are required to state their conclusions *seriatim*. Whatever be the explanation, the usage is as Chief Justice Blake has found it, and though not a subject of great weight as a matter of law, it is still interesting as a legal curio.

THE TILDEN WILL CASE. — The final decision of the famous Tilden will case in the New York Court of Appeals is suggestive, not only as an addition to the list of bad wills of well-known lawyers, but also as emphasizing one of the weaknesses of the New York law. Mr. Tilden left the bulk of his property to his executors, in trust to turn it over to the Tilden Trust, an institution to be incorporated for the purpose of building a free library, and for such other educational and scientific purposes as they thought best. The amount to be given to the Tilden Trust was in the discretion of the executors, and the giving of any depended on their approval of the corporation when formed.

The court refuses to find a trust, for lack of a certain beneficiary. It is not denied that a valid bequest may be made to a corporation to be created after the death of the testator; but the rights of the corporation must begin at once on its creation; it is the discretion in the executors here that invalidates the trust. New York knows nothing of the *cy-près* doctrine, which elsewhere upholds charitable bequests when no beneficiary is named.

Three kindly judges out of seven manage to dissent on the ground that the section giving to the executors power to give to general purposes, should they fail to approve the Tilden Trust, is void, and that therefore the former section stands as a valid trust. This ground of construction does not, of course, touch the general question of law.

Besides the obvious slur the facts of this case throw on the general policy of discarding the *cy-près* doctrine, they give an opportunity to deplore the fact that what might be called the *laissez-faire* doctrine is not more widely applied in cases of attempted trusts. The property is given to the executors. The equitable rights of the next of kin, like all constructive trusts, rest purely on ideas of natural justice, and it certainly seems as though the interference of equity to set aside the legal title is uncalled for, except when the failure of the testator's object gives the next of kin a right in justice to complain. When the donees, as in this case, are willing to fulfil the testator's wishes, it seems as though equity, in interfering to prevent their action, is converting a regulating principle which depends for its life solely on natural justice into a positive rule having no defence either in policy or in principle. Such, however, seems to be the general law.

JUSTIFIABLE HOMICIDE — KILLING A THIEF. — The defendant in a recent Texas case hired a seeming tramp, so his own testimony runs, to help him gather a crop. The conversation and conduct of the new acquisition soon suggested to the master the probability that his servant was a horse-thief; whereupon he determined, on the night of the expected transaction, to keep watch with a double-action pistol.

An hour after the watch began a man appeared, leading one of the defendant's mares from the pasture. When the defendant shouted to the thief to "hold up," the latter slipped the halter from the animal's